



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that details of a claim for damages was not submitted as the Landlord believes it is entitled to retain the security deposit without establishing damage or loss. The Landlord's application for compensation for damages is therefore being refused, pursuant to section 59(5)(a) of the *Residential Tenancy Act (Act)*, because the Application for Dispute Resolution did not provide sufficient particulars of the claim for compensation for damages, as is required by section 59(2)(b) of the *Act*. In reaching this conclusion, I was strongly influenced by the absence of a list of alleged damages.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant at the forwarding address provided by the Tenant, via registered mail, on September 16, 2011. The Landlord submitted Canada Post Documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

The Agent for the Landlord stated that copies of documents that were submitted to the Residential Tenancy Branch were mailed to the Tenant at the forwarding address provided by the Tenant, via registered mail, on November 21, 2011. The Landlord submitted Canada Post Documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 88 of the *Act*, and they were accepted as evidence for these proceedings.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to retain all or part of the security deposit paid by the Tenant and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Agent for the Landlord stated that this tenancy began on April 15, 2011; that the Tenant paid a security deposit of \$325.00; and that the Tenant was obligated to pay monthly rent of \$650.00 by the first day of each month, all of which is corroborated by the tenancy agreement that was submitted in evidence.

The Agent for the Landlord stated that a condition inspection report was completed on April 15, 2011, a copy of which was provided to the Tenant on that date. A copy of the report was submitted in evidence.

The Agent for the Landlord stated that the tenancy ended on August 31, 2011. He stated that the Tenant provided his forwarding address to the building manager, in writing, on August 31, 2011.

The Agent for the Landlord stated that on August 15, 2011 a Notice of First Opportunity to Schedule a Condition Inspection was posted at the rental unit, in which the Landlord proposed that the rental unit be inspected at 12:00 p.m. on August 31, 2011; that on August 20, 2011 a Notice of Final Opportunity to Schedule a Condition Inspection was posted at the rental unit, in which the Landlord proposed that the rental unit be inspected at 12:00 p.m. on August 31, 2011; that the Tenant did not attend the inspection at the scheduled time; that the Landlord completed a condition inspection report on August 31, 2011; and that a copy of that report was mailed to the Tenant on November 21, 2011 along with other evidence for these proceedings.

Analysis

Section 38(1) of the *Act* stipulates that within 15 days after the tenancy ends and the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(2) of the *Act* stipulates that subsection (1) does not apply if the tenant's right to the return of a security deposit has been extinguished under sections 24 (1) or 36 (1) of the *Act*. There is no evidence the tenant's right to the return of a security deposit has been extinguished under section 24 (1) of the *Act*.

Section 36(1) of the *Act* stipulates that the right of a tenant to the return of a security deposit is extinguished if the landlord complied with section 35(2) of the *Act* and the tenant has not participated on either occasion. Section 35(2) of the *Act* stipulates that the landlord must offer the tenant at least two opportunities, as prescribed, for the inspection.

Section 17(1) of the *Residential Tenancy Regulation* stipulates that a landlord must offer a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times. On the basis of the evidence presented by the Landlord and in the absence of evidence to the contrary, I find that the Landlord complied with Section 17(1) of the *Residential Tenancy Regulation* on August 15, 2011 when the Landlord posted a Notice of First Opportunity to Schedule a Condition Inspection of the rental unit, in which the Landlord proposed that the rental unit be inspected at 12:00 p.m. on August 31, 2011.

Section 17(2)(a) of the *Residential Tenancy Regulation* stipulates that if a tenant is not available at the time of the proposed inspection the tenant may propose an alternative time to the landlord. I have no evidence that shows the Tenant proposed an alternate time.

Section 17(2)(b) of the *Residential Tenancy Regulation* stipulates that if a tenant is not available at that time of the first proposed inspection the landlord must propose a second opportunity, different from the opportunity described by section 17(1) of the Residential Tenancy Regulation.

On the basis of the evidence presented by the Landlord and in the absence of evidence to the contrary, I find that the Landlord has not complied with Section 17(2)(b) of the *Residential Tenancy Regulation*. I find that there was no evidence or testimony presented that causes me to conclude that the Landlord ever proposed a time for an inspection that was different from the time and date that was initially proposed for August 31, 2011. In reaching this conclusion, I find that the Notice of Final Opportunity to Schedule a Condition Inspection proposed that the inspection occur at the same date and time as was proposed by the Notice of First Opportunity to Schedule a Condition Inspection.

Conclusion

As the Landlord has failed to establish that the Tenant owes money in relation to this tenancy or that the Tenant's right to the return of his deposit has been extinguished, I dismiss the Landlord's application to retain the Tenant's security deposit.

I find that the Landlord's application has been without merit and I dismiss the Landlord's application to recover the fee for filing this Application for Dispute Resolution.

As the Landlord has not established a right to the security deposit, I find that it must be returned to the Tenant. Based on these determinations I grant the Tenant a monetary Order for the amount \$325.00. In the event that the Landlord does not comply with this

Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 01, 2011.

Residential Tenancy Branch